

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 02-0118
Individual Income Tax
Calendar Years 1999 and 2000**

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ISSUE**I. Tax Administration – Penalty**

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalties assessed.

STATEMENT OF FACTS

The taxpayers' 1997 Indiana individual income tax return reflected a refund due in the amount of \$9,544. According to the taxpayer's representative, the entire refund amount was to be applied to the taxpayer's 1998 estimated income tax account. However, someone altered the return by entering the figures \$2,500 as the amount to be applied to the 1998 estimated account and \$7,044 as an amount to be refunded to the taxpayer.

The \$7,044 was refunded to the taxpayer. However, in preparing their 1998 and subsequent Indiana individual income tax returns, the taxpayers assumed that this amount had been applied to their estimated account and claimed credit for estimated tax payments accordingly. Naturally, the actual balance in the taxpayer's estimated account was consistently \$7,044 less than what the taxpayers believed the balance to be. For tax years 1999 and 2000, the Department assessed penalties for the underpayment of estimated tax and the failure to remit the proper amount of tax due by the due date.

In a letter dated January 24, 2002, the taxpayer's representative requested that these penalties be waived based, in part, upon the following statement: "As soon as the refund (of \$7,044) was identified as an estimated payment, the taxpayers paid the additional tax, interest and penalty..." This remittance was processed by the Department on November 27, 2000. The taxpayer's representative further asserts that the Department was in error in making the refund.

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DISCUSSION

Administrative Rule 45 IAC 15-11-2 (b) states the following:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The identity of the person who altered the 1997 return is unknown. However, lacking any evidence to the contrary, the Department must conclude that this alteration was made by the taxpayers. The refund of \$7,044 for tax year 1997 is deemed to be due to the taxpayers' error and not to any error on the part of the Department. Therefore, the imposition of penalty is proper. The taxpayers have not established that their failure to timely pay the full amount of tax due was due to reasonable cause and not due to negligence.

FINDING

The taxpayers' protest is denied.